



POLICE DEPARTMENT

March 3, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Andrew Dorsett
Tax Registry No. 930072
Police Service Area 3
Disciplinary Case No. 2012-8139

The above-named member of the Department appeared before me on December 18, 2014 and January 9, 2015, charged with the following:

1. Said Sergeant Andrew Dorsett, while assigned as a Police Officer to the 105 Precinct, while on duty, at a location known to the Department in Queens County, on December 26, 2011, did wrongfully cause false entries to be made in Department records, to wit: said Sergeant and his partner Police Officer Kenneth Baronian improperly misclassified a crime. *(As amended)*

P.G. 203-05, Page 1, Paragraph 4 - PERFORMANCE ON DUTY - GENERAL
GENERAL REGULATIONS

2. Said Sergeant Andrew Dorsett, while assigned as a Police Officer to the 105 Precinct, while on duty, at a location known to the Department in Queens County, on December 26, 2011, having responded to a complaint of a Past Burglary, did fail to refer the complaint to the Detective Squad for further investigation, as required. *(As amended)*

P.G. 207-07, Page 2, Paragraph 6 - PRELIMINARY INVESTIGATION OF
COMPLAINTS (OTHER THAN VICE
RELATED OR NARCOTICS COMPLAINTS)
- COMPLAINTS

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office. Respondent was represented by Craig R. Hayes, Esq. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department presented Sergeant George Manolagas, Howard Crombie, Sergeant Andrew Russo and Police

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Officer Kenneth Baronian as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of the witnesses and hearsay declarations, this tribunal finds that there was insufficient evidence to support a finding that Respondent engaged in the charged misconduct. Accordingly, Respondent is found not guilty.

FINDINGS AND ANALYSIS

The following is a summary of the relevant, undisputed facts. On December 26, 2011, Respondent and his partner, Kenneth Baronian, were assigned to the 105 Precinct. On that date, Respondent took on the responsibilities of the Radio Motor Patrol Operator and Baronian took on the responsibilities of the Radio Motor Patrol Recorder. At approximately 2012 hours, they drove their assigned RMP to [REDACTED] Queens, in response to a radio call coded 10-21, past burglary. The complainant, [REDACTED] met Respondent and Baronian. The complainant informed the officers that he had returned from work to find that his front door was damaged and left ajar. Upon closer inspection he noticed a dent, scraped off paint and a long black mark on the frame below the lock where the door had been pried open. Pieces of molding and splintered wood were scattered on the floor. Due to its condition, the door could not be locked. The complainant showed the officers the damage and accompanied them through the second and third floors of the house. Respondent testified that he did not enter the third floor bedroom. Although it is uncontested that items were strewn about and a tablet and

cell phone were in plain view. The complainant did not report anything missing. (Tr. 32-39, 68-70, 78-79, 81-83; Dept. Exs. 1A-1C)

Baronian was the recorder for this job. He prepared a Complaint Report (61) classifying the crime as criminal mischief and wrote the following description of what had been observed:

At time and place of occurrence, complainant/victim states he went to work and when he came home noticed someone had dented his front door causing less than \$250.00 USC dollars in damage.

Baronian radioed in the final disposition code as 93 Charlie, which confirmed that the complaint report had been completed. Respondent testified that at the time he also believed that the job should have been classified as criminal mischief. Both Respondent and Baronian now understand that this incident was misclassified and that it should have been recorded as a burglary warranting further investigation. Baronian accepted a penalty for misclassifying the crime in the 61. (Tr. 71-72, 80-82; Dept. Ex. 3)

At issue is whether Respondent wrongfully caused false entries to be made in Department records. In assessing culpability, it is important to note that Respondent was the Radio Motor Patrol Operator and his partner was the Radio Motor Patrol Recorder. Although not dispositive of this case, pursuant to Section 202-23 of the Patrol Guide, Baronian was responsible for the accurate completion of the 61. Given this assigned division of duties, Respondent can only be found guilty if the preponderance of the credible evidence establishes that his collusion, intentional actions or negligence caused this false entry to be made. The record here is devoid of any such evidence.

Respondent testified that he did not have a role in filling out the 61 and that Baronian did not seek his input. Baronian, who was a Department witness, did not

contradict Respondent's account. In fact, Baronian testified that he classified the incident, completed the 61 and called in the final disposition. He did not recall discussing the 61 with Respondent before submitting it, but affirmatively stated that Respondent certainly did not tell him to code the incident as criminal mischief. (Tr. 73-74)

Likewise, the testimony of Department witnesses Manolagas and Russo do not support a finding of guilt. In 2011, part of Sergeant George Manolagas' responsibilities was to analyze 61s issued by officers assigned to the 105 Precinct. At trial he confirmed that classifying a crime was the "judgment call" of the Recorder and that the Operator was not required to review or sign off on the Recorder's work. In fact, there is no place for a partner to approve entries made on a 61. Sergeant Manolagas added that misclassifying a burglary as criminal mischief would provide no benefit to an individual officer. (Tr. 16-17, 20-28)

In 2011, Department witness Sergeant Andrew Russo was assigned to the Quality Assurance Division. That year he conducted a six-month audit of crime classifications at the 105 Precinct based on an anonymous letter asserting that the command was not accepting complaints for assaults and burglaries. He found that of the 378 crimes classified as criminal mischief, only eight were misclassified and subsequently upgraded to burglary. Thus, he did not find a pattern of misclassifications or inappropriate steering by supervisors. During the audit he noticed the discrepancy in the report at issue in this case and interviewed both Respondent and Baronian. Baronian took full responsibility for the erroneous crime classification. At trial, Russo stated that while a commanding officer might benefit from classifying an incident as a misdemeanor instead of a felony,

he verified Manolagas' statement that this misclassification would provide no benefit to an individual officer. (Tr. 45, 49-54)

The testimony presented by the Department's witnesses failed to prove that Respondent caused the false entry to be made by engaging in collusion, intentional acts or negligence. Given Officer Baronian's testimony, there is also insufficient evidence for this tribunal to make an inference that Respondent caused the false entry. *Disciplinary Case No. 2011-5518* (Apr. 14, 2014) is instructive on this point: "Evidence in this forum must establish with some degree of certainty that the conduct it can prove occurred is not innocent or unrelated to the charged event."

Furthermore, that Respondent, the assigned Operator, agreed with an improper crime classification made by the Recorder is alone insufficient to prove the charged misconduct. It is axiomatic that not every mistake or error in judgment is sanctionable misconduct. A finding of misconduct requires some demonstration of willful intentional or negligent conduct on the employee's part. Mere errors of judgment that are not so unreasonable as to be considered negligence are not a basis for a finding of misconduct. *See Ryan v. New York State Liquor Auth.*, 273 A.D. 576, 79 N.Y.S.2d 827 (3d Dep't 1947)

The evidence also fell short of proving that Respondent engaged in misconduct by failing to refer this matter to the Detective Squad. A proper classification of this incident would have triggered a supervisor's response and a likely referral to the Detective Squad. Inasmuch as Respondent was not found liable for the misclassification, he cannot be found liable for the failure to refer. Furthermore, neither Department witnesses Russo

nor Manolangas testified that Respondent had an independent duty to refer this matter to the Detective Squad.

Accordingly, I find that although the evidence in this case clearly established that Respondent was mistaken in his belief about the classification of this crime, his error fell short of proving that he caused the false entry to be made or failed to comply with an obligation to refer this matter to the Detective Squad. Thus, I recommend that the charges be dismissed.

I note that this recommendation is based strictly on the specific facts of this case. In making these findings I reject both the argument that an Operator is strictly liable for a Recorder's entries and the argument that an Operator bears no responsibility for a Recorder's entries. This is a determination that must be made on a case-by-case basis.

Respectfully submitted,

Rosemarie Maldonado

Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

MAR 27 2015
William J. Bratton
WILLIAM J. BRATTON
POLICE COMMISSIONER